

HONOURABLE SRI JUSTICE ELIPE DHARMA RAO

W.P.No.18286 of 2003

Dated:28th July, 2005

Between:

Yentrapragada Somaraju ...**PETITIONER**

and

1. The Special Deputy Collector, Tribal Welfare, I.T.D.A.office,
K.R.Puram, Buttaigudem Mandal, W.G.District and another.

...RESPONDENTS

HONOURABLE SRI JUSTICE ELIPE DHARMA RAO

WRIT PETITION No.18286 of 2003

ORDER:

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This writ petition is filed seeking a Mandamus declaring the eviction order passed by the first respondent in Proceedings S.R.No.212/99 dated 28-02-2000 on the ground that one Kosuri Bhaskara Rao, who is a non-tribal, is in possession of suit schedule land, as illegal and arbitrary and consequently to direct the respondents not to evict the petitioner from the schedule land.

2. It is the case of the petitioner that he is in possession and enjoyment

of the schedule land in R.S.No.121 of an extent of Ac.4.30 cts. and R.S.No.122 of an extent of Ac.1.70 cts of Komugudem village, Buttaigudem Mandal, West Godavari District. Originally, the scheduled land was registered in the name of P.Venkata Chalam and Brahmayya, who are non-tribals, in 1933. The said land was purchased by Sri K.Sreeramulu from these persons, and subsequently, by his uncle by name K.Suryarao through an agreement of sale dated 15-08-1967. During the family partition, the schedule land was allotted to the petitioner along with other schedule lands. As the lands are situated in agency area, a complaint under Section 3 (1) A of the A.P.S.A.L.T. Regulations 1/59 as amended by 1/70 was filed by the Tahsildar before the Special Deputy Collector against the petitioner and his family members stating that the petitioner's possession is in contravention of the regulations and evict him from the schedule land. After thorough enquiry, the Special Deputy Collector dismissed the said complaint. Thereafter, after a lapse of considerable time, again the Special Deputy Collector, Tribal Welfare, initiated suo motu proceedings and conducted enquiry under Section 3 (2) A of the A.P.S.A.L.T. Regulations 1/59 as amended by 1/70 against one K.Bhaskara Rao, who stated to be in possession of the suit schedule land of an extent of Ac.3.30 cents, without giving any notice or opportunity to the petitioner, and passed eviction order on 28-02-2000 directing the Mandal Revenue Officer, Buttayagudem, to eject the petitioner, his family members, kith and kin or his men or agents whosoever is or are in possession of the property mentioned in the schedule and further directed the Mandal Revenue Officer, Buttaigudem, to execute the decree and restore the property to the real tribal claimant, if any available, in the absence of whom, assign to a landless poor tribe. Challenging this order, this writ petition has been filed.

3 . The respondents filed counter-affidavit stating that the land in R.S.No.121 admeasuring Ac.3-30 cts. stands in the name of K.Bhaskar Rao, who is a non-tribal and his possession is found to be objectionable. It is further stated that during the Panchanama the Mandal Revenue Inspector, Buttaigudem, recorded that the petitioner was in possession of the land to an extent of Ac.1-30 cents and two others viz., M.Rama Rao and P.Venkata Subbaiah were in possession of the land to an extent of Ac.1-00 and Ac.0-80

cents, respectively. But the possession of the petitioner is not supported by any revenue records. Therefore, the writ petition is liable to be dismissed.

4 . The petitioner filed reply-affidavit stating that when the Mandal Revenue Inspector recorded, during the course of Panchanama that the petitioner is in possession of the property of an extent of Ac.1-30 cts., the petitioner is entitled to be issued a notice, during the enquiry, before passing the ejectment order. In the absence of any notice and opportunity, the impugned order is liable to be set aside.

5. Heard both sides and considered the material on record.

6. Admittedly, the impugned order is in the nature of final order without any notice. Nothing has been stated in the counter affidavit with regard to the issuance of notice to the petitioner. It is also clear from the reply-affidavit filed by the petitioner that he was not given any notice or any opportunity before the impugned order came to be passed. Inasmuch as the impugned order was not preceded with any notice to the affected party, the same suffers from the vice of violation of principles of natural justice, hence, the same cannot be sustained.

7 . Having regard to the facts and circumstances of the case, the impugned order is quashed and set aside. However, it is left open to the respondents to conduct a thorough enquiry, if they are so advised, after giving due opportunity to the affected parties and pass appropriate orders after considering the objections that may be filed by the petitioner.

8. The writ petition is accordingly allowed. No order as to costs.

E.DHARMA RAO, J

28th July, 2005

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